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U.S. Department of
Transportation
Office of the Secretary
of Transportation

**DEPARTMENT ACTION ON APPLICATION
IN DOCKET OST-2003-16547- 4**

(Application of Polar Air Cargo, Inc., filed November 18, 2003)

Approved under assigned authority (14 CFR §385.13).

Date of Action: December 8, 2003

for Herald Carlo
Director, Office of International
Aviation

This action is subject to the conditions attached. Persons entitled to petition the Department for review of this action under the Department's regulations, 14 CFR §385.30, should file their petitions within seven days of the date of this action. This action is effective immediately, and the filing of a petition for review will not alter its effectiveness.

**Application of Polar Air Cargo, Inc., for a Blanket Statement of Authorization under the U.S.-
Switzerland Open Skies Agreement to Place Swiss' code on Polar's Services
(Docket OST-2003-16547, filed November 18, 2003)**

The authority granted is subject to the following conditions:

(a) The statement of authorization will remain in effect only as long as (i) Polar Air Cargo and Swiss continue to hold the necessary underlying authority to operate the code-share services at issue, and (ii) the code-share agreement providing for the code-share operations remains in effect.

(b) Polar Air Cargo and/or Swiss must promptly notify the Department (Office of International Aviation) if the code-share agreement providing for the code-share operations is no longer effective or the carriers decide to cease operating any or all of the approved code-share services.¹ (Such notice should be filed in Docket OST-2003-16547)

(c) Polar Air Cargo and/or Swiss must notify the Department no later than 30 days before they begin any new-code service under the code-share services authorized here. Such notice shall identify the market(s) to be served, which carrier will be operating the aircraft in the code-share market added, and the date on which the service will begin. (Such notices should be filed in Docket OST-2003-16547)

(d) Notwithstanding any provisions in the contract between the carriers, our approval here is expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out such service in computer reservation systems and elsewhere; that the carrier selling such transportation (*i.e.* the carrier shown on the waybill) accept responsibility for the entirety of the code share journey for all obligations established in its contract of carriage with the shipper; and that the liability of the operating carrier be unaffected. Further, the operating carrier shall not permit the code of its U.S. air carrier code-sharing partner to be carried on any flight that enters, departs or transits the airspace of any area for whose airspace the Federal Aviation Administration has issued a flight prohibition.

(e) The authority to operate to third countries is subject to the condition that any service provided under the statement of authorization shall be consistent with all applicable agreements between the United States and the foreign countries involved. Furthermore, (a) nothing in the award of this blanket statement of authorization should be construed as conferring upon Polar Air Cargo rights (including code-share, fifth-freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless Polar Air Cargo notifies the Department of its intent to serve such a market and unless and until the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights;² and (b) should there be a request by any carrier to use the limited-entry route rights that are included in Polar Air Cargo's authority by virtue of the blanket statement of authorization granted here, but that are not then being used by Polar Air Cargo, the holding of such authority will not be considered as providing any preference for Polar Air Cargo in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

(f) The authority granted here is specifically conditioned so that neither Polar Air Cargo nor Swiss shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

We may amend, modify, or revoke the authority granted at any time without hearing at our discretion.

*An electronic version of this document is available on the World Wide Web at
http://dms.dot.gov/reports/reports_aviation.asp*

¹ We expect this notification to be received within ten (10) days after such non-effectiveness or of such decision.

² The notice in paragraph (c) above can be used for this notification.